

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

AMEREN ILLINOIS COMPANY	:	
d/b/a Ameren Illinois,	:	
Petitioner	:	Docket No. 13-0075
	:	
Compliance Filing Per December 5,	:	
2012 Order in Docket No. 12-0293.	:	

**STAFF OF THE ILLINOIS COMMERCE REPLY TO AMEREN ILLINOIS COMPANY’S
RESPONSE TO STAFF’S MOTION TO STRIKE CERTAIN PORTIONS OF AMEREN
EXHIBIT 1.0 AND EXHIBITS 1.2 AND 1.3 IN THEIR ENTIRETY**

NOW COMES the Staff of the Illinois Commerce Commission (“Staff”), by and through its undersigned counsel, and pursuant to Section 200.190 of the Illinois Commerce Commission’s (“Commission”) Rules of Practice (83 Ill. Adm. Code 200.190), and replies to the Ameren Illinois Company (“Ameren” or “Company”) Response (“Ameren Reply”) to Staff’s Motion to Strike (“Staff Motion”). In support of this Motion, Staff states as follows:

On November 8, 2013, Staff filed a Motion to Strike certain pre-filed testimony contained in the Ameren Ex. 1.0, the Direct Testimony of Jacqueline K. Voiles. Lines 119-136, line 139 (“and AIC’s response to Staff Data Request KC 17.01”), and lines 186-190 of Ms. Voiles Direct Testimony as irrelevant testimony. Staff also sought to strike Exhibits 1.2 and 1.3 as both irrelevant and hearsay. Notably, the entire Ameren defense to the Motion is that both Staff and the Commission erred in its Order in Docket No. 12-0293 (“12-0293 Order”), which was issued on December 5, 2012.

Ameren argues that Staff erred by failing to provide the right context for the Commission to decide the P-card issues. It seems that Staff erred by not forcing Ameren to produce documents, which were entirely under Ameren's control and of which Staff was unaware of their existence.

For instance, on page 3 of its Response, Ameren complains that:

No party to Docket 12-0293 requested a copy of Ameren's Employee Expense Reporting Policy in discovery. *Had that occurred, AIC would have produced it and it could have been included in the record.* (Ameren Ex. 1.0, p. 6:119-24.)

AIC supplied some information in Docket 12-0293 on the procedures for corporate credit cards in response to Staff Data Request KC 17.01, which described the procedures for issuing corporate credit cards and reviewing employee expense reports. *That response was not included in the record, however.* (*Id.* at 7:131-36, 139; Ameren Ex. 1.2.)

AIC also supplied some examples of business expense justifications that were included in employee expense reports in response to Staff Data Request KC 17.02. *That response also was not included in the record.* (Ameren Exs. 1.0, p. 9:187-10:190; 1.3.)

Ameren Response at 3.

The above examples all place fault directly at Staff's feet. However, beyond reaching the wrong decisions in Docket 12-0293, Ameren also complains that the ALJs and Commission erred in that:

Staff did not raise any issues in Docket 12-0293 with the controls that govern the usage of corporate credit cards and the reporting of credit card expenses. The assertion that there was "an apparent lack of controls over [credit card] usage" was raised for the first time in the Proposed Order, after the evidentiary hearing and post-hearing briefing. *Thus, AIC did not have the opportunity to respond to the assertion in testimony or move the controls into the record.* (*Id.* at 7:125-30.)

Id.

Because of these errors by Staff, the ALJs, and the Commission, Ameren, it argues, needed to provide the information in this proceeding that it argues would have been relevant to the Commission in Docket 12-0293. Ameren apparently was a neutral bystander during the 12-0293 proceeding, unable to adequately represent itself due to the Staff's, ALJ's and Commission's failures. In fact, Ameren paints itself as the veritable potted plant, just sitting there unable to speak or take any action.

Of course, all of Ameren's whining about Staff not making an adequate record on Ameren's behalf, or the ALJs and Commission denying it adequate due process, is utter nonsense. Ameren has the burden of proof in a rate case. 220 ILCS 5/9-201. Further, the Commission is entirely justified to apply a negative inference against Ameren for not producing evidence under its control. See *e.g., Jenkins v. Dominick's Finer Foods*, 288 Ill. App. 3d 827, 831 (1st Dist. 1997).

Most notably, however, Ameren's entire defense constitutes an unlawful collateral attack on the Commission's Order in Docket No. 12-0293. Ameren is estopped by law from re-arguing, or as it puts it, introducing facts this proceeding, which would have been relevant in the 12-0293 proceeding, had Ameren put these facts in to that record. In short, Ameren is attempting to adduce evidence into, and reargue, the Docket 12-0293 case in order to enhance its position in this proceeding. This it may not do.

As the Illinois Supreme Court explained:

Collateral estoppel is an equitable doctrine. When properly applied, collateral estoppel, also referred to as issue preclusion, promotes fairness and judicial economy by preventing the relitigation of issues that have already been resolved in earlier actions.

* * *

Thus, the United States Supreme Court has explained, ‘Under the judicially developed doctrine of collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision is conclusive in a subsequent suit based on a different cause of action involving a party to the prior litigation.’ *United States v. Mendoza*, 464 U.S. 154, 158, 78 L. Ed. 2d 379, 383, 104 S. Ct. 568, 571 (1984).

DuPage Forklift Service, Inc., v. Material Handling Services, Inc., 195 Ill. 2d 71, 77-80 (2001).

Ameren’s attempt to defend itself against the Motion to Strike falls far short as it consists of nothing but a collateral attack on the Commission’s Order in Docket No. 12-0293 undertaken to improve its position in this case.

Ameren itself makes this perfectly clear when it explains that the information sought to be struck is “helpful to the trier of fact, in that they show the limitations of the record and the parties’ review on these issues in Docket 12- 0293.” Response at 1.

Likewise, Ameren explains that:

The facts concerning Docket 12-0293, to which Staff objects as irrelevant, *set the stage* for the Commission’s review of procedures and controls on credit card usage and employee expense reporting in this proceeding. They concern the prior record evidence and prior review of the same issues at issue here. They provide necessary and helpful context to the Commission’s prior decision that bear upon the same issues in this docket.

Response at 4 (emphasis added).

Thus, as Staff argued in its Motion, relevant evidence in a Commission proceeding must be limited to **matters actually at issue** and before the Commission for determination, and also to evidence that has probative power sufficient to make the Commission’s determination of facts at issue more or less probable. Motion at 3. The 12-0293 Order specifically directed Ameren to include “internal controls on P-Card usage” and “information on the process for reviewing P-Card expense reports to ensure

that they are reviewed in a consistent manner.” (12-0293 Order at 69.) As Ameren itself acknowledges the subject of Staff’s Motion are not matters actually at issue in this case but, instead, are issues already decided in Docket 12-0293. As Ameren also acknowledges, this information is not relevant but merely “sets the stage” for issues in this proceeding.

WHEREFORE, for all the reasons set forth above, Staff respectfully moves the ALJ to strike certain portions of the direct testimony of Ameren witness Jacqueline K. Voiles (Ex. 1.0, lines 119-136, line 139 (“and AIC’s response to Staff Data Request KC 17.01”), and lines 186-190) and Ameren Exhibits 1.2 and 1.3 in their entirety.

Respectfully submitted,

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